

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

<i>In the Matter of</i>	)	
	)	
Petition of Dongili Investment	)	CG Docket No. 02-278
Group, Inc. and Label Tape Systems, Inc.	)	CG Docket No. 05-338
For Retroactive Waiver of	)	
47 C.F.R. § 64.1200(a)(4)(iv)	)	

**COMMENT OF BALMORAL HOME, INC. TO PETITION OF  
DONGILI INVESTMENT GROUP, INC. AND LABEL TAPE SYSTEMS, INC.**

The petition for retroactive waiver filed by Dongili Investment Group, Inc. and Label Tape Systems, Inc. is abusive and should be denied.

Dongili Investment Group, Inc. and Label Tape Systems, Inc. claim that plaintiff, Balmoral Home, Inc. and/or members of the putative class consented to receiving the alleged unsolicited advertising facsimiles. (Petition, p. 3)

Label Tape Systems, Inc. is not a defendant in the lawsuit it references in the petition. Moreover, neither Dongili Investment Group, Inc., nor Label Tape Systems, Inc. supply any basis for their assertions that they obtained “prior express permission” from anyone, including plaintiff.

The Commission has repeatedly held that the business claiming consent or an established business relationship has the burden of proof. “[A] sender should have the obligation to demonstrate that it complied with the rules, including that it had the recipient’s prior express invitation or permission.” *In re: Rules and Regulations Implementing The Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278; CG Docket No. 05-338, FCC Release 06-42, 21 FCC Rcd 3787, at 3812, 2006 FCC LEXIS 1713; 38 Comm. Reg. (P & F) 167 (April 6, 2006).

The FCC has consistently adhered to this position. *Virtual Auto Loans*, EB-09-TC-230, 2009 FCC LEXIS 4342 (March 9, 2009); *New York Security and Private Patrol, Inc.*, EB-09-TC-231, 2009 FCC LEXIS 4343 (March 9, 2009).

Courts have also followed this rule and placed the burden of proof on the sender of the communication. *Gutierrez v. Barclays Group*, 10cv1012 DMS (BGS), 2011 U.S. Dist. LEXIS 12546, 2011 WL 579238, at \*2 (S.D. Cal. Feb. 9, 2011); *Van Sweden Jewelers, Inc. v. 101 VT, Inc.*, 1:10-cv-253, 2012 WL 4074620, 2012 U.S. Dist. LEXIS 85663 (W.D.Mich., June 21, 2012); *Green v. Service Master on Location Servs. Corp.*, 07 C 4705, 2009 WL 1810769, 2009 U.S. Dist. LEXIS 53297 (N.D. Ill. June 22, 2009); *Sadowski v. Med1 Online, LLC*, 07 C 2973, 2008 WL 2224892, \* 3-4, 2008 U.S. Dist. LEXIS 41766 (N.D. Ill. May 27, 2008) (observing that issue of consent is an affirmative defense); *Hinman v. M & M Rental Ctr., Inc.*, 596 F. Supp. 2d 1152 (N.D. Ill. 2009) (finding that consent did not exist with respect to the class because the TCPA allocates the burden of obtaining consent on the senders of unsolicited faxes, rather than requiring recipients to "opt-out"); *Lampkin v. GGH, Inc.*, 2006 OK CIV APP 131, 146 P.3d 847, ¶27 (Okla. Ct. App. 2006) (recipient should not be charged with proving the negative propositions that it did not give permission or did not have a business relationship with sender). This is consistent with the general rule that the party claiming the benefit of an exception in a federal statute, and the party who logically would have evidence of consent or an established business relationship, has the burden of coming forward with at least some evidence of the applicability of these exceptions. *E.E.O.C. v. Chicago Club*, 86 F.3d 1423, 1429-30 (7th Cir. 1996); *FTC v. Morton Salt Co.*, 334 U.S. 37, 44-45 (1948); *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 128 S. Ct. 2395, 2400, 171 L. Ed. 2d 283 (2008) ("[T]he burden of proving

justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits."); *Irwin v. Mascott*, 96 F. Supp. 2d 968 (N.D. Cal. 1999).

Here, Dongili Investment Group, Inc. and Label Tape Systems, Inc. offer absolutely nothing to substantiate that anyone consented to receiving faxes from them.

Balmoral Home, Inc. denies giving consent to the sender of the fax. (Affidavit of Meir Stern, Appendix A). The fax seeks to establish a relationship and is not sent pursuant to any existing relationship. It is not specifically addressed to any person, which would normally be the case if consent to send it had been obtained. In short, the fax has every indication of a "blast fax" sent without consent or an established business relationship.

There is also no evidence that Dongili Investment Group, Inc. or Label Tape Systems, Inc. or anyone else that sent the fax misunderstood anything about their obligation to include an opt-out notice. The fact that there is some type of opt out language, albeit non-compliant with the statute, on the fax sent to Balmoral Home, Inc. negates any argument of reliance.

On this record, no action by the Commission is warranted. The petition should be stricken and/or denied. The petition is nothing more than a baseless attempt to complicate an enforcement action by the recipient of the fax.

Respectfully submitted,

s/ Daniel A. Edelman  
Daniel A. Edelman

Daniel A. Edelman  
Heather Kolbus  
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC  
20 South Clark Street, Suite 1500  
Chicago, Illinois 60603  
(312) 739-4200

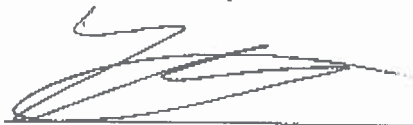
(312) 419-0379 (FAX)  
*Counsel for Balmoral Home, Inc.*

# APPENDIX A



\$1,500 in statutory damages for each unsolicited facsimile advertisement that was sent to it by defendant Dongili Investment Group, Inc..

Executed at Chicago, Illinois, on February 13, 2015



Meir Stern, on behalf of  
Balmoral Home, Inc.

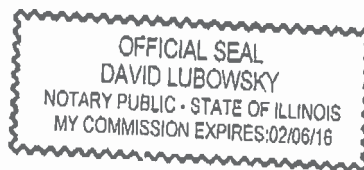
Subscribed and sworn before me

this 13 day of Feb, 2015



Notary Public

Executed on Feb, 13, 2015





## EXHIBIT A

# LABEL TAPE SYSTEMS

**PLEASE DELIVER TO: ADMINISTRATOR / EVS DIRECTOR**



**STOP** writing on the residents' garments with a Marker-  
**AUTOMATE** your Laundry Labeling!



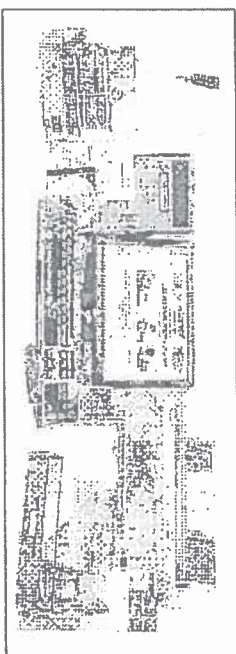
Equipment can be purchased separately or  
We can tailor any system package to your facility needs.  
**0% Interest Payment Plans Available!**

## ALSO AVAILABLE!

**EYEGLASSES AND DENTURE ID KITS**

**LTS VISION ID KIT "NO MORE LOST EYEGLASSES"**  
Kit comes with enough material for 300 pairs of eyeglasses

**LTS DENTURE ID KIT IS THE ANSWER TO PREVENT LOST DENTURES.**  
Kit comes with enough material for 50 sets of dentures.



## LTS NAVIGATOR

### COMPLETE LAUNDRY LABELING SYSTEM

- ✓ MEETS ALL COMPLIANCE REGULATIONS
- ✓ COST EFFECTIVE
- ✓ CAN SAVE A 100 BED FACILITY \$5000.00 PER YEAR IN REPLACEMENT COST OF RESIDENTS CLOTHING

**SAVE \$\$\$ IN  
REPLACEMENT  
COSTS!**

Leader in the Industry for over 25 Years!  
We Pride ourselves in our customer service.  
We do not outsource any of our help!  
**FREE** Tech Support for keeping your account current.  
You will always talk with a live person during regular business hours.

**800-749-9268 CALL NOW!**  
**www.labelandtapesystems.com**

Preferred Vendor for Groups such as: Tidewater Purchasing Group, HPS, DSSI, CHIPS  
Services provided to Facilities such as: Golden Living Centers, Genesis Health Care, Kindred Health Care, Life Care Centers, Good Samaritan, Silverado Living Centers, Catholic Health, NHC Healthcare, Encore Centers, RFMS, Life Care Services, Heritage Enterprises, Veterans Centers, Masonic Homes, Ethica and many others..

If you received this fax in error, please call our toll free number (800) 749-9268 to have it removed.